

**Security Council**

Distr.: General
22 May 2012

Original: English

**Report of the Secretary-General on the protection of
civilians in armed conflict****I. Introduction**

1. The present report, submitted pursuant to the request contained in the statement by the President of the Security Council dated 22 November 2010 (S/PRST/2010/25), is my ninth report on the protection of civilians in armed conflict.

2. In its statement, the Council expressed its deep regret that civilians accounted for the vast majority of casualties in armed conflict, including as a result of deliberate targeting, indiscriminate or disproportionate attacks and sexual and gender-based violence, as well as other acts that violate international humanitarian law and international human rights law. Eighteen months on, the abysmal state of the protection of civilians has changed little. The need to strengthen our efforts to meet the five core challenges elaborated in my reports of 2009 (S/2009/277) and 2010 (S/2010/579) remains urgent.

3. The present report provides an update on progress made in responding to the core challenges, namely, enhancing compliance by parties to conflict with international law; enhancing compliance by non-State armed groups; enhancing protection by United Nations peacekeeping and other relevant missions; improving humanitarian access; and enhancing accountability for violations. The report takes stock of encouraging developments and ongoing or emerging concerns affecting civilians in contemporary conflicts and makes further recommendations for responding to the core challenges. It should be read in conjunction with my 2009 and 2010 reports, the recommendations of which remain relevant.

II. State of the protection of civilians

4. The situation endured by civilians in many of today's conflicts continues to warrant attention and action. Despite some progress, the reality on the ground continues to be characterized by the frequent failure of parties to conflict to comply with their obligations under international humanitarian law to respect and protect civilians as well as with relevant human rights obligations.



A. Ongoing and emerging concerns

5. The failure to comply with the law manifests itself in many ways, including in the deliberate killing of civilians; attacks against civilian objects such as schools and health-care facilities; impeded provision of humanitarian assistance; sexual violence; forced disappearance; torture or other cruel, inhuman or degrading treatment; the recruitment and use of children; attacks against journalists and human rights activists; and a failure to hold accountable those who perpetrate or instigate violations and to provide support, justice and redress to victims. Displacement within and across borders remains a conspicuous feature of conflict. At the end of 2010, some 27.5 million people had been internally displaced as a result of conflict and violence and a further 15.4 million were refugees.¹ While the number of internally displaced persons reportedly declined slightly in 2011, to 26.4 million, their number had steadily increased over the previous 15 years.²

6. In Afghanistan, the United Nations Assistance Mission in Afghanistan (UNAMA) documented 3,021 civilian deaths in 2011, an increase of 8 per cent compared with 2010. Of these, anti-Government elements were reportedly responsible for 2,332 civilian deaths, an increase of 14 per cent from 2010, and pro-Government forces caused 410 civilian deaths, which accounted for 14 per cent of all conflict-related civilian deaths, a reduction of 4 per cent from 2010. Civilian deaths from aerial attacks increased in 2011, despite a decrease in the number of such attacks. More than 185,000 people were displaced by conflict in Afghanistan last year, bringing the number of internally displaced persons to approximately 500,000. This includes hundreds of families displaced in the Kunar and Nangarhar Provinces by shelling in the neighbouring Federally Administered Tribal Areas of Pakistan. Since January 2012, some 200,000 people have been displaced in Pakistan, by security operations in the Khyber Agency.

7. In the Democratic Republic of the Congo, the activities of non-State armed groups, including the Forces démocratiques de libération du Rwanda and the Lord's Resistance Army (LRA), and elements of the national security forces continue to adversely affect civilians, particularly in the Kivus and Orientale Province. While the Government has adopted a zero-tolerance policy regarding violations by its own security forces, perpetrators, including senior army and police officials, frequently go unpunished. The resumption of military operations against non-State armed groups in the east of the country has resulted in displacement and reprisals against civilians. In addition, LRA attacks on civilians in remote areas of the country and in the Central African Republic and South Sudan continue to have serious humanitarian consequences. More than 445,000 civilians are currently displaced in LRA-affected areas. I welcome the development towards a joint United Nations/African Union regional strategy to address the LRA-related threats.

8. In Somalia, attacks by Al-Shabaab continue to exact a heavy toll on civilians in Mogadishu and elsewhere. Concerns have also surfaced recently over summary executions of civilians in Beledweyne and Baidoa by militias aligned with the Transitional Federal Government. Clashes between Al-Shabaab and Transitional

¹ Office of the United Nations High Commissioner for Refugees, "Global Trends 2010" (Geneva, 2011).

² "Global Overview 2011: people internally displaced by conflict and violence", Internal Displacement Monitoring Centre and Norwegian Refugee Council (Geneva, 2012).

Federal Government forces and those of the African Union Mission in Somalia (AMISOM) continue to result in displacement in the southern and central regions. In February 2012, approximately 66,000 people were displaced, compared with 36,000 in January. Insecurity was the main reason for displacement, including fighting between the Transitional Federal Government/AMISOM and Al-Shabaab in the Afgooye corridor.

9. Since June 2011, heavy fighting between the Sudanese Armed Forces and the Sudan People's Liberation Movement-North in South Kordofan and Blue Nile States has driven tens of thousands of Sudanese people into Ethiopia and South Sudan. Renewed clashes in the disputed border areas between the Sudan and South Sudan are prompting more people to seek safety. Some have fled to Upper Nile State in South Sudan and to western Ethiopia. Inter-communal violence in Jonglei State in South Sudan escalated in December and January, resulting in death and injury and the displacement of thousands of people.

10. In the past 18 months, civilians in Gaza and southern Israel have been affected by intermittent clashes and three rounds of sustained fighting between Israeli forces and Palestinian armed groups. While Israeli airstrikes on Gaza are generally directed at military targets, between January 2011 and April 2012, 54 Palestinian civilians were killed in Gaza (39 per cent of all Palestinian fatalities) and another 579 were injured (88 per cent of all injuries). Palestinian militants fired rockets and mortars indiscriminately at locations in southern Israel, killing 3 Israeli civilians and injuring 28. Overall in 2011, 59 Palestinian civilians were killed and 2,059 were injured in Gaza and the West Bank, and 12 Israeli civilians were killed and 59 injured in southern Israel. In the occupied West Bank, more than 260 Palestinian homes and 475 other civilian structures have been destroyed by Israeli authorities since the beginning of 2011, resulting in the displacement of more than 1,300 people, more than half of them children.

11. In the Syrian Arab Republic, since March 2011, the excessive use of force by national security forces has reportedly claimed the lives of over 9,000 people, while thousands more have fled their homes. Extrajudicial killings have been reported, as has the widespread use of torture of civilians by security forces. Civilians have borne the brunt of the violence, as blockades and curfews have been imposed on cities such as Homs, Hama, Dar'a and Idlib. During blockades, residents have been unable to obtain water, food and medical supplies and national security forces reportedly have targeted residential water supply systems. The blockades have often made it impossible to get the injured to hospitals. The use of explosive weapons in populated areas, as in Homs and Idlib, has had profound humanitarian consequences, including in terms of damage to buildings and essential infrastructure and the ongoing threat posed by explosive remnants of war. I am also gravely concerned at bomb attacks reportedly carried out by armed opposition groups in Damascus and Idlib, which have also claimed civilian lives.

12. Women and children continue to be subject to various forms of violence. In Afghanistan, UNAMA reported an increase in the number of women and children killed in conflict-related violence in 2011 in comparison with 2010, particularly in the second half of the year. Sexual violence, including rape, remains a prominent feature of conflict, affecting not only women and girls, but also boys and men. During the past year, sexual violence has remained widespread, including in Côte d'Ivoire, the Democratic Republic of the Congo, Libya and, more recently, northern

Mali. Other grave violations continue to be committed against children, in particular their recruitment, killing and maiming, and abduction. Children are also affected by attacks on schools and hospitals.

13. Attacks against and other interference with health-care facilities and providers are of serious concern in several conflicts despite the special protection afforded by international humanitarian law to medical staff and transport, hospitals, clinics and the like. For example, the International Commission of Inquiry on Libya received numerous allegations of attacks on hospitals and ambulances, while medical personnel treating *thawar* (so-called revolutionary fighters) were reportedly subject to being killed, arbitrarily arrested and detained.

14. The violence in the Syrian Arab Republic and last year's conflict in Libya also highlighted the dangers for journalists and other media professionals working in such situations. Six journalists were killed in Libya in March and April 2011, while at least 11 have been killed in the Syrian Arab Republic since November 2011.³ Journalists play a crucial role by reporting on the treatment and suffering endured by civilians in situations of conflict and on violations of humanitarian law and human rights. In some situations, journalists were killed by parties to conflict, abducted, subject to arbitrary arrest and detention, subjected to forcible disappearance or harassed. Impunity for such violations remains widespread.

15. I remind the Security Council of the need, as expressed in its resolution 1738 (2006), for States and other parties to conflict to prevent attacks against journalists and to prosecute those responsible for such attacks. Since the adoption of the resolution, the Council has expressed concern about attacks against journalists in only one situation-specific resolution, concerning Afghanistan, and it did not call for any action in response. I welcome the initiatives that are being pursued in the Human Rights Council by the Government of Austria and some human rights special procedures mandate holders to ensure better protection of journalists. The Council may wish to be briefed on these initiatives with a view to developing a more proactive approach to the issue.

16. The conflict in Libya also highlighted the plight of migrant workers and their families in situations of conflict, with reports of killings, sexual violence, discrimination and arbitrary detention, affecting in particular people from sub-Saharan Africa. Despite the efforts of humanitarian organizations, many migrant workers encountered serious difficulty in leaving Libya and thousands lacked shelter or stayed in overcrowded transit centres without access to basic services. The situation in Libya was not unique. In March 2011, reports indicated that migrant workers in Côte d'Ivoire were being attacked by militiamen and security forces and expelled from parts of Abidjan and the west of the country.

17. I remain concerned by the continuing use of unmanned aerial vehicles, or drones, for targeted attacks, including in situations of armed conflict because it is unclear in those situations whether all persons targeted are combatants or are directly participating in hostilities. This raises questions about compliance with the principle of distinction. Drone attacks also reportedly have caused hundreds of civilian casualties, raising questions about compliance with the principle of proportionality. Ensuring accountability for any failure to comply with international

³ International News Safety Institute, country profiles for Libya and the Syrian Arab Republic. Available from www.newssafety.org.

law is difficult when drone attacks are conducted outside the military chain of command and beyond effective and transparent mechanisms of civilian or military control. As more States obtain this technology, these issues will become more acute. I urge relevant Member States to be more transparent about the circumstances in which drones are used and to take all necessary precautions to ensure that attacks involving drones comply with applicable international law.

B. Security Council action

18. In the past 18 months, there have been important developments in the Security Council's actions to enhance the protection of civilians. In March 2011 the Council responded decisively to the escalating violence and use of explosive weapons in populated areas of Côte d'Ivoire. In its resolution 1975 (2011), the Council recalled its authorization for the United Nations Operation in Côte d'Ivoire (UNOCI) to use all necessary means to carry out its mandate to protect civilians, including preventing the use of heavy weapons against the civilian population.

19. Although the context was very different, the Security Council's response to the situation in Libya was also decisive. In its resolution 1970 (2011), the Council condemned violations against civilians, demanded compliance with international law, imposed a comprehensive arms embargo and targeted sanctions and referred the situation to the International Criminal Court, actions in line with recommendations in my previous two reports on the protection of civilians. The subsequent decision, in resolution 1973 (2011), to authorize all necessary measures to protect civilians prevented deaths and injuries. However, the extent to which its implementation was perceived to go beyond the protection of civilians raised concerns among some Member States that continue to colour the Council's discussions on the protection of civilians and related issues in other situations. It may also have had the unintended effect of undermining the protection of civilians agenda, including as a framework for action in future crises. In the future, in addition to complying scrupulously with international humanitarian law and human rights law, the implementation of such decisions must be limited to promoting and ensuring the protection of civilians.

20. Against the backdrop of the intervention in Libya, Brazil presented the concept of "responsibility while protecting", which provides that any military action authorized by the Security Council abide by the letter and the spirit of the resolution and be implemented in strict conformity with international humanitarian law. The concept also calls for enhanced Council procedures to monitor and assess how resolutions are interpreted and implemented. I recall the recommendation in my 2007 report on the protection of civilians that the Council systematically call for compliance with international humanitarian law by peacekeeping and other missions authorized to use force and that it request that such missions regularly provide information on actions to spare civilians from the effects of hostilities (S/2007/643). Such an approach is particularly important when force is authorized expressly for the purpose of protecting civilians.

21. I am concerned about the continuing and inaccurate conflation of the concepts of the protection of civilians and the responsibility to protect. While the two concepts share some common elements, particularly with regard to prevention and support to national authorities in discharging their responsibilities towards civilians, there are fundamental differences. First, the protection of civilians is a legal concept

based on international humanitarian, human rights and refugee law, while the responsibility to protect is a political concept, set out in the 2005 World Summit Outcome (see General Assembly resolution 60/1). Second, there are important differences in their scope. The protection of civilians relates to violations of international humanitarian and human rights law in situations of armed conflict. The responsibility to protect is limited to violations that constitute war crimes or crimes against humanity or that would be considered acts of genocide or ethnic cleansing. Crimes against humanity, genocide and ethnic cleansing may occur in situations that do not meet the threshold of armed conflict. I urge the Security Council and Member States to be mindful of these distinctions.

22. The Security Council has continued to include language relating to the protection of civilians in most of its relevant situation-specific resolutions. The Council has shown greater willingness to use targeted sanctions against those who violate international humanitarian and human rights law. Additional lists of perpetrators were made on the basis of criteria related to such violations under existing sanctions regimes, and the list established in 2011 in relation to Libya includes attacks against civilians among the criteria. Five of the Council's 12 sanctions regimes include listing criteria related to violations of international humanitarian or human rights law.

23. I welcome the continuing role of the informal Expert Group on the Protection of Civilians as a forum for briefing Security Council members on protection issues before the establishment or renewal of relevant mission mandates. I also welcome the convening of ad hoc Expert Group briefings, such as that held on Côte d'Ivoire in March 2011, and the thematic briefing on humanitarian access in February 2012. Such briefings are valuable for keeping the Council informed, and I believe that they should be encouraged. In addition to the Council's important and continuing collaboration with the Emergency Relief Coordinator, I welcome the fact that the High Commissioner for Human Rights has been invited to brief the Council on thematic issues, such as the protection of civilians, as well as on country-specific situations. I urge the Council to continue and to strengthen this and other practices, such as the Arria formula briefings, in order to ensure that it is informed more fully, in a timely manner, about the protection of civilians in all relevant contexts. In this regard, I also encourage the Security Council to systematically request information on the protection of civilians from all relevant United Nations entities.

C. Encouraging developments

24. In the past 18 months there have been a number of encouraging developments. The November 2011 decision of States parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects to revisit the problem of mines other than anti-personnel mines is welcome (see CCW/CONF.IV/4/Add.1). Such mines pose a threat to the safety of civilians, impede the timely and safe provision of humanitarian assistance and hamper reconstruction and development activities.

25. Preparatory discussions have continued for the United Nations Conference on the Arms Trade Treaty, to be held in July 2012. The Conference presents a critical opportunity for Member States to address the human cost of the poorly regulated

arms trade and the widespread availability and misuse of weapons. A future treaty should include a provision that weapons not be transferred when there is a clear risk that they will be used to commit serious violations of international humanitarian and human rights law. It should also cover the full array of conventional weapons, including small arms, and ammunition.

26. Two recent landmark verdicts mark important steps forward for international justice. In April 2012, the Special Court for Sierra Leone found Charles Taylor, the former President of Liberia, guilty of aiding and abetting two non-State armed groups in the commission of war crimes and crimes against humanity during the conflict in Sierra Leone. The judgement is a significant milestone for international criminal justice, as it marked the first conviction of a former Head of State by an international criminal tribunal for planning, aiding and abetting war crimes and crimes against humanity. It sends a strong signal that Heads of State will be held accountable for their actions. Earlier, the International Criminal Court, in its first verdict, in March 2012, found Thomas Lubanga guilty of war crimes for conscripting and enlisting children under the age of 15 and using them to actively participate in hostilities in the Democratic Republic of the Congo. It highlights the need to arrest Bosco Ntaganda, a co-defendant of Lubanga, and to surrender him to the Court, along with all other individuals for whom the Court has issued arrest warrants and who remain at large.

27. In July 2011 I instituted the human rights due diligence policy on United Nations support to non-United Nations security forces. This policy incorporates the experience gained in implementing the conditionality policy developed by the United Nations Organization Mission in the Democratic Republic of the Congo in 2009 and the conclusions of an inter-agency evaluation of its implementation in 2010. The policy applies wherever any United Nations entity is contemplating or providing support to any non-United Nations security force. In accordance with the policy, such support may not be provided where there are substantial grounds for believing that there is a real risk of the receiving forces committing grave violations of international humanitarian, human rights or refugee law and where the relevant authorities fail to take corrective measures. Adherence to the human rights due diligence policy is critical for preventing such violations and thus for maintaining the legitimacy and credibility of the United Nations as a promoter and defender of human rights and ensuring compliance with the Organization's international law obligations.

28. The need for improved recording of casualties is gaining increased attention. Such recording can clarify the causes of harm to civilians as well as the actions needed to end such harm and prevent its recurrence. In this connection, I am encouraged by the commitment of the African Union Mission in Somalia (AMISOM) to establish a civilian casualty-tracking analysis and response cell. I echo the call by the Security Council in its resolution 2036 (2012) for donors and partners to support the establishment of the cell. It may be useful to review its performance, and that of a similar mechanism established by the International Security Assistance Force (ISAF) in Afghanistan, with a view to ensure their improvement and possible replication elsewhere.

29. AMISOM also endorsed a new policy on "indirect fire" intended to mitigate harm to civilians, which includes a component on voluntarily making amends for harm suffered by civilians as a result of lawful actions during combat operations. I

have welcomed the practice of making amends, as implemented by most ISAF States, and am encouraged by its adoption by AMISOM. I underline, however, that this practice does not replace the obligation to investigate serious violations of international humanitarian and human rights law and to prosecute those responsible. Nor does it relieve parties of their obligations regarding reparations. This remains an issue that requires further attention by the Security Council and Member States.

30. Efforts to improve monitoring and reporting on the protection of civilians continue, including on the development of guidance for reporting on the protection of civilians in my situation-specific reports, as requested in Security Council resolution 1894 (2009). Meanwhile, the Office for the Coordination of Humanitarian Affairs has initiated consultations with United Nations partners on developing indicators for improved monitoring and reporting on protection trends, taking into account existing monitoring and reporting mechanisms. At the same time, technology is providing civilians with the ability to report on ongoing violence in real time. The United Nations and the humanitarian community more generally are only beginning to grasp the associated opportunities, as well as the risks.

III. The five core challenges

31. The five core challenges to ensuring more effective protection for civilians remain relevant.

A. Enhancing compliance

32. As I have stressed repeatedly, international humanitarian law requires parties to conflict to spare the civilian population from the effects of hostilities. Failure to do so can result in the death and injury of civilians who are directly targeted or otherwise caught in the fighting. Such failure is frequently the precursor to displacement, which often puts civilians at risk of further violations, including sexual violence and forced recruitment; physical and mental suffering; and a potentially chronic dependency on humanitarian assistance. Sparing civilians from the effects of hostilities requires compliance by parties to conflict with international humanitarian law and, in particular, the principles of distinction and proportionality. It requires parties to take all feasible precautions both in attacking and in defending. The law is also clear that under no circumstances do violations of these rules by one party justify violations by any other party. Yet violations continue to be commonplace, with devastating consequences for civilians.

33. While all violations require our attention and action, I am concerned by attacks against and other interference with health-care services, which, as recognized in a 2011 study by the International Committee of the Red Cross (ICRC), is one of the biggest, most complex and least recognized humanitarian issues of our time.⁴ Conflict disrupts health care in many different ways and when it is most needed. Hostilities prevent health-care providers, as well as the wounded and the sick, from reaching medical facilities. Health-care facilities and vehicles may be directly targeted or damaged; military or security personnel at times forcibly enter such facilities looking for enemies; and gaining control of a hospital is sometimes an

⁴ ICRC, "Health care in danger: a sixteen-country study" (Geneva, 2011).

objective of non-State armed groups. The wounded and sick are attacked and medical personnel are threatened, abducted, injured or killed, or prosecuted. As a result, it is difficult or impossible to provide adequate care to those in need. Moreover, a single act of violence that damages a hospital or kills health-care personnel has consequences for many other people requiring care who then suffer further through lack of treatment.

34. ICRC highlights these issues and points to the need to build the evidence base concerning attacks against and interference with health care. I therefore welcome the recommendation of the Executive Board of the World Health Organization (WHO) that the World Health Assembly, at its meeting in May 2012, mandate WHO to collect and report data on attacks against medical facilities, providers, vehicles and patients.⁵ I encourage Member States to support this recommendation. I also welcome the Security Council's decision in resolution 1998 (2011) to extend the scope of grave violations for which parties to conflict can be listed in my reports on children and armed conflict to include recurrent attacks on hospitals and schools as well as recurrent attacks or threats of attack against protected persons in relation to schools or hospitals. The Council must, however, assume a more proactive approach to preventing and responding to such incidents.

35. The ICRC study found that explosive weapons caused more deaths, injuries and damage than any other weapon in attacks on health-care facilities. I have repeatedly expressed concern about the humanitarian impact of using explosive weapons in densely populated areas. Explosive weapons include artillery shells, missile and rocket warheads, mortars, aircraft bombs, grenades and improvised explosive devices. Their common feature is that they are indiscriminate within their zones of blast and fragmentation effect, which makes their use highly problematic in populated areas.

36. In my 2010 report I called for more systematic collection of data on and analysis of this problem. I welcome the research carried out by Action on Armed Violence.⁶ Using data gathered on the use of explosive weapons around the world in 2011, Action on Armed Violence found that at least 21,499 civilians had been killed or injured by such weapons and that civilians accounted for 71 per cent of all casualties. Most civilian deaths and injuries — 87 per cent — occurred in populated areas, including markets, schools, places of worship and private homes.

37. This research underlines the gravity of the problem. My Emergency Relief Coordinator highlighted the issue in Côte d'Ivoire, Libya, the Sudan and the Syrian Arab Republic and called upon parties to refrain from using explosive weapons in densely populated areas. The Council specifically authorized UNOCI to take action to prevent the use of heavy weapons against civilians in Côte d'Ivoire and called upon the Government of the Syrian Arab Republic to immediately end the use of heavy weapons in population centres (resolutions 2042 (2012) and 2043 (2012)). In October 2011, ICRC noted that owing to the significant likelihood of indiscriminate effects and despite the absence of an express legal prohibition for specific types of weapons, explosive weapons with a wide impact area should be avoided in densely

⁵ See WHO Executive Board resolution EB130.R14.

⁶ Action on Armed Violence, "Monitoring explosive violence: the EVMP dataset 2011" (London, 2012).

populated areas.⁷ Civil society has also mobilized around the issue, establishing, in March 2011, a coalition of non-governmental organizations, the International Network on Explosive Weapons, which calls upon States and other actors to strive to avoid the harm caused by explosive weapons in populated areas; to gather and make available relevant data; to realize the rights of victims; and to develop stronger international standards.

38. In many conflicts, the use of explosive weapons in populated areas is a major cause of displacement. There are other triggers: people flee in fear of violence and other violations, or are forced from their homes at gunpoint or by other means. Whatever the cause, I am concerned that displacement is accepted too readily as an inevitable consequence of conflict. In some situations, displacement can be a protective response for communities under threat, and it often lasts as long as the threat exists, after which time people return to their homes. Moreover, the right to freedom of movement and to leave one's country and seek asylum must always be respected. The acceptance of displacement as inevitable, however, risks the condemnation of millions of people to lasting misery and degradation. Short of preventing conflict, more must be done to prevent the circumstances that lead to displacement.

39. First, we must strongly advocate for respect for applicable international law. Fewer civilians would flee if parties to conflict spared them from the effects of hostilities and complied with the principles of distinction and proportionality, as required by international humanitarian law. Second, parties to conflict must refrain from the use of forced displacement as a deliberate tactic. As stipulated by international humanitarian law, displacement may be resorted to only in situations where the security of the civilian population or imperative military reasons so demand. Even then, the law stipulates that displacement must last no longer than necessary and that the affected population must be provided with shelter and assistance and be transferred back to their homes as soon as hostilities in the area have ceased. This is all too frequently not the case.

40. Such failures increase the onus on the international community, including the Security Council, to seek to prevent displacement by demanding and seeking compliance with the law, including accountability for those who forcibly displace civilians. We must reject displacement as a by-product of conflict — in some circumstances it may constitute a war crime or crime against humanity and must be investigated and prosecuted as such.

B. Enhancing compliance by non-State armed groups

41. Non-State armed groups play a role — albeit not an exclusive one — in perpetrating such violations against civilians as attacking health-care services, using explosive weapons in populated areas and causing forced displacement. I have, therefore, emphasized repeatedly the need for consistent engagement with those groups to seek improved compliance with international humanitarian and human rights law and to gain safe access to those in need.

⁷ ICRC, "International humanitarian law and the challenges of contemporary armed conflicts" (document 31HC/11/5.1.2, prepared for the 31st International Conference of the Red Cross and Red Crescent, Geneva, 2011).

42. In my previous report I referred to research that identified incentives for non-State armed groups to comply with international norms to protect civilians.⁸ The authors have published a new report to help the international community address the lack of compliance by such groups.⁹ Reaffirming the urgent need for greater and more systematic engagement with non-State armed groups regarding compliance, the report notes that engagement must be initiated as early as possible, must be conducted at a high level by all parties concerned and must be sustained throughout the conflict. It also emphasizes that understanding the factors that affect the level of compliance by a given group with international norms is critical if engagement is to be successful. Such factors include the need for popular support and the group's self-image and self-interest.

43. The report stresses that agreements and undertakings by non-State armed groups to respect international norms should be in writing to allow the groups to disseminate, monitor and enforce the norms within their ranks. Impartial external monitoring of the actions of the groups is critical. Acknowledgement of improved compliance is also important, as it can enhance respect for international norms.

44. The report stresses the need to be clear from the outset that engagement does not constitute political recognition. This is vital, as concerns over the political recognition and "legitimacy" that engagement is perceived to confer have prevented some States from permitting such engagement. There are nevertheless cases in which engagement of one form or another has been proactively facilitated by States. In the Philippines in 2009, both the Government and the Moro Islamic Liberation Front actively supported and cooperated with the non-governmental organization Geneva Call to facilitate a verification mission to investigate the Front's alleged breaches of the Geneva Call deed of commitment banning anti-personnel mines.¹⁰ There are also examples of States and non-State armed groups entering into agreements to respect international humanitarian law, such as the agreement of the Philippines with the National Democratic Front and that of the Sudan with the Sudan People's Liberation Movement. In addition, the United Nations has concluded action plans to end the recruitment and use of children in armed conflict. In the Philippines, the Sudan and elsewhere, the United Nations has developed such plans with non-State armed groups with the consent of the States concerned in the context of Security Council resolution 1612 (2005).

45. The focus on recognition and legitimacy is problematic in that it detracts from the more serious issue of the consequences for civilians when engagement does not take place. While engagement will not always result in improved protection, its absence will almost certainly mean more civilian casualties in current conflicts. Moreover, not engaging and adopting an exclusively repressive approach to non-State armed groups, such as dealing with them through the lens of counter-terrorism and placing them on terrorist lists, or refusing to countenance amnesty for participation in hostilities that do not rise to the level of war crimes or serious

⁸ Geneva Academy of International Humanitarian Law and Human Rights, "Armed non-State actors and international norms: towards a better protection of civilians in armed conflict" (Geneva, 2010).

⁹ Ibid., *Rules of Engagement: Protecting Civilians through Dialogue with Armed Non-State Actors* (Geneva, 2011).

¹⁰ Geneva Call, "Report of the 2009 verification mission to the Philippines to investigate allegations of anti-personnel landmine use by the Moro Islamic Liberation Front" (Geneva, 2010).

human rights violations, risks further radicalizing such groups. Such an approach offers little incentive to comply with international humanitarian law.

46. In this connection, I stress my ongoing concern about counter-terrorism legislation and other measures that criminalize the engagement of humanitarian organizations with certain non-State armed groups or that otherwise impede principled humanitarian action. The Office for the Coordination of Humanitarian Affairs and the Norwegian Refugee Council have commissioned a study on the impact of national counter-terrorism measures on humanitarian action. The study will include a review of relevant national legislation criminalizing the provision of support to and engagement with designated entities, an analysis of provisions in funding agreements limiting or imposing conditions on humanitarian activities, consideration of measures imposed by host States that preclude, limit or impose conditions on the engagement of humanitarian actors with, or support for, groups considered "terrorist", and a review of how different humanitarian actors have reacted to such measures. In addition, the impact of such measures on humanitarian operations will be assessed and ways of reducing their adverse impact on humanitarian action will be recommended.

C. Protection of civilians by United Nations peacekeeping and other missions

47. Mandating peacekeeping missions to protect civilians remains one of the most significant actions taken by the Security Council to enhance protection. Since my previous report, two new missions with a mandate to protect civilians have been established: the United Nations Mission in South Sudan (UNMISS) and the United Nations Interim Security Force for Abyei. The implementation of such mandates, including establishing effective early-warning mechanisms, ensuring the provision of adequate resources to monitor, prevent and respond to incidents and supporting the efforts of host country authorities to implement their responsibilities to protect civilians, remains challenging. In some instances, the limited degree of cooperation from host States and their capacity to act have affected the ability of missions to discharge their mandates, including those for the protection of civilians.

48. The mass rapes in Walikale in the Democratic Republic of the Congo in July and August 2010 underlined the need to better understand the threats and vulnerabilities that confront civilians. In an effort to prevent such situations in the future, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo has worked with partners to establish a set of coordination mechanisms and early-warning and response tools to prioritize protection in practice. Similarly, the response of UNMISS to inter-communal violence in 2011 and 2012 in Jonglei State illustrated that early warning depends on effective relations with local communities and that responses must be coordinated with, and be supportive of, the national authorities. Both situations underscore the challenge missions face in protecting civilians over a vast terrain with finite resources and limited mobile response capacities. Nonetheless, missions will continue to do their utmost, while also seeking to manage expectations.

49. In addition to providing physical protection, missions continue to assist in creating protective environments by supporting the establishment of effective rule of law and security institutions. Such support is essential. As the United Nations

Independent Expert on the situation of human rights in Côte d'Ivoire recently concluded, most of the recent violations in the country stemmed largely from the State's failure to prevent them because of the difficulty of reforming the security sector and re-establishing its authority throughout the country. Providing such support can be challenging when elements of the national security forces are implicated in violations. The human rights due diligence policy sets the parameters for United Nations support in such situations.

50. The Department of Peacekeeping Operations and the Department of Field Support are continuing their work to ensure that peacekeepers have the operational support necessary to protect civilians. Following the development in 2010 of the operational concept on the protection of civilians in United Nations peacekeeping operations and the framework for drafting comprehensive protection of civilians strategies, missions in Côte d'Ivoire, the Democratic Republic of the Congo, South Sudan and Darfur are revising their protection strategies. Other relevant missions are assessing the scope for developing such strategies, in consultation with humanitarian actors. To ensure that all mission components are sufficiently prepared to protect civilians, operational guidance for military and police components is being developed. In addition, the Departments of Peacekeeping Operations, Field Support and Political Affairs and the Office of the United Nations High Commissioner for Human Rights (OHCHR) have finalized a policy on the sharing of information among mission components in order to prevent and respond to human rights violations. I look forward to the full implementation of this policy by the entities concerned.

51. The Departments of Peacekeeping Operations and Field Support have developed a protection of civilians resource and capability matrix to assist missions in applying their existing resources and capabilities to the implementation of protection mandates. The matrix helps to highlight capacity and resource gaps and provides a frame of reference for identifying possible protection activities. In addition, training modules on the protection of civilians have been finalized. Such efforts will help to ensure that future peacekeepers are better prepared.

52. United Nations peacekeeping missions are not the only protection actor on the ground. Moreover, they are not always deployed in contexts where civilians face serious risks. United Nations and other humanitarian organizations, including ICRC and various non-governmental organizations, play a long-established and critical role in seeking to enhance the protection of civilians in armed conflict, including in places that do not have a peacekeeping presence.

53. The nature and extent of interaction and coordination between United Nations peacekeeping and political missions and humanitarian actors is varied. There are positive experiences. In the Democratic Republic of the Congo and South Sudan, for example, formalized mechanisms exist for interaction with humanitarian organizations, including in relation to sharing non-confidential information on protection risks and threats affecting the population and collaboration to ensure more informed decisions regarding the prioritization of military activities. In some cases, United Nations peacekeeping missions have supported access for humanitarian actors, for example, by providing security.

54. Effective interaction and coordination with United Nations peacekeeping and political missions have sometimes been hampered by concerns on the part of humanitarian actors about the impact that close association may have on their ability

to operate in an independent, neutral and impartial manner and be perceived as doing so. The principal concern for humanitarian actors is that, particularly in conflict situations, their access and security may be undermined if they are perceived by belligerents or segments of the population as being aligned with the political objectives of missions. In Afghanistan some non-governmental organizations have withdrawn from United Nations humanitarian coordination mechanisms, and some have threatened to do so in Somalia, because of concerns that humanitarian actors lack sufficient independence from the Organization's broader political objectives.¹¹

55. A recent study commissioned by the United Nations Integration Steering Group¹¹ found that the degree to which such concerns are substantiated in practice is context specific. Such concerns notwithstanding, it should be recognized that peacekeeping missions can provide a degree of physical protection to the civilian population that humanitarian actors cannot. They may also be able to establish the security environment needed to facilitate the provision of humanitarian assistance. In addition, protection-mandated missions and humanitarian organizations may undertake complementary protection activities, such as on child protection. Effective interaction and coordination among the different actors is essential for improving and strengthening their respective — as well as the overall — protection response. To that end, the Office for the Coordination of Humanitarian Affairs is leading a process by which the Global Protection Cluster will develop guidance for field protection clusters to ensure more effective dialogue and interaction with peacekeeping and political missions.

56. Consideration should also be given to the protection of civilians in the context of stabilization approaches adopted by individual Member States and some multilateral organizations. In recent years, stabilization has provided a framework for international interventions in fragile and conflict-affected States, including Afghanistan, Iraq, Libya, South Sudan and the Sudan. Stabilization is generally understood as both a short-term and a long-term strategy that combines multiple areas, including counter-insurgency, counter-terrorism, peacebuilding, development and state-building, with the aim of improving security and stability.¹² It is essential that military actors involved in implementing stabilization approaches respect and protect civilians in accordance with international humanitarian law and that they respect human rights law. In addition, while the protection of civilians is not always the priority or a key objective of stabilization strategies, such strategies may seek to reduce violence and instability. Dialogue and interaction between humanitarian actors and stabilization missions is important in securing positive protection outcomes, including by promoting the fulfilment of the latter's obligations to respect and protect civilians in their military operations.

¹¹ V. Metcalfe, A. Giffen and S. Elhawary, "UN integration and humanitarian space: an independent study commissioned by the UN integration steering group" (Overseas Development Institute, December 2011).

¹² See S. Collinson, S. Elhawary and R. Muggah, "States of fragility: stabilisation and its implications for humanitarian action", Humanitarian Policy Group Working Paper (Overseas Development Institute, 2010).

D. Humanitarian access

57. Access is a fundamental prerequisite for humanitarian action which is often the only means of survival for millions of vulnerable people caught in conflict. However, as illustrated in the annex to the present report, such access continues to be constrained, deliberately or otherwise, and tens of thousands of people in need of assistance and protection receive neither. The need for the Council's attention to this issue remains.

58. The annex also underlines the complex and varied nature of constraints on access. Understanding those constraints, the actors that can influence them and the options for response requires considerable analysis. It also requires a comprehensive understanding of the options that exist for reaching civilians, particularly during active hostilities.

59. There are various approaches to reaching conflict-affected persons during active hostilities, including the temporary cessation of hostilities, humanitarian pauses, humanitarian corridors, de-confliction arrangements and days of tranquillity. Those terms are sometimes used interchangeably, and yet they have specific meanings. It is essential to choose the approach that is best suited to the particular circumstances.

60. A temporary cessation of hostilities is a suspension of fighting agreed upon by all relevant parties for a specific period. It may be undertaken for various reasons, including for humanitarian purposes. In such cases, the agreement identifies the geographic area of operations and the period during which specific humanitarian activities will be carried out. A humanitarian pause is a temporary cessation of hostilities for exclusively humanitarian purposes. It requires the agreement of all relevant parties and is usually for a defined period of time and a specific geographic area in which the humanitarian activities are to be implemented.

61. Humanitarian corridors refer to specific routes and logistical methods agreed upon by all relevant parties to allow the safe passage of humanitarian goods and/or people from one point to another in an area of active fighting. Prerequisites for the establishment and operation of a humanitarian corridor include acceptance and consent by all relevant parties for impartial relief actions to be carried out, agreement by all relevant parties to respect the conditions of the corridor, clear instructions within the chain of command of each party regarding the conditions of the corridor (such as purpose, route or specified time frame for its use) and arrangements to facilitate the passage of humanitarian personnel and supplies. The "corridor" is typically a geographic route, often with a specified time frame. Humanitarian corridors have frequently proved difficult to maintain. During active fighting, in which territory may change hands or the location of conflict may shift, humanitarian corridors should be viewed as dynamic mechanisms that must be renegotiated as needed.

62. De-confliction arrangements involve the exchange of information between humanitarian actors and parties to conflict to coordinate the time and location of relief activities so as to ensure that military operations do not jeopardize the lives of humanitarian personnel, impede the passage of relief supplies or the implementation of humanitarian activities or endanger beneficiaries. Finally, days of tranquillity enable access to health-care services during conflict, for example to participate in national immunization campaigns or other exclusively humanitarian activities. Days

of tranquillity require the agreement of all relevant parties to grant access to and not interfere with the work of medical and related personnel on the designated days.

63. The different approaches cannot be imposed, militarily or otherwise, on parties to conflict. They depend on the consent of all relevant parties if they are to be relied upon to serve as safe, effective and sustainable means of gaining access to those in need.

E. Accountability

64. Fundamental to strengthening compliance is the need to bolster accountability for violations of international humanitarian and human rights law, for both parties to conflict and individual perpetrators. My previous report focused on international commissions of inquiry and fact-finding missions, which have been increasingly used to respond to such violations. International commissions of inquiry and fact-finding missions have proved useful in encouraging national authorities to take actions necessary to cease violations and provide accountability, as well as in recommending remedies for victims, including reparations and institutional reform. Their findings have laid the groundwork for prosecutions, including by providing input for Security Council decisions to refer situations to the International Criminal Court and helping to inform the Court's investigations.

65. In the past 18 months, the Human Rights Council has established commissions of inquiry in relation to Côte d'Ivoire, Libya and the Syrian Arab Republic, all of which have found that serious violations of international law had occurred, requiring independent and impartial investigations with a view to bringing the perpetrators to justice. Their respective recommendations warrant careful consideration and follow-up by Member States and the Security Council. I welcome the decision, in March 2012, of the Human Rights Council in its resolution 19/22 to extend the mandate of the Commission of Inquiry on the Syrian Arab Republic and urge the Syrian authorities to facilitate its work by allowing access to the country. I also welcome the decision of the Council, in its decision 19/2, to call upon Sri Lanka to implement the constructive recommendations contained in the report of the Lessons Learnt and Reconciliation Commission and to take all additional steps necessary to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans. I encourage Sri Lanka to cooperate with OHCHR and the Human Rights Council's special procedures in this regard.

66. In my previous report, I requested Secretariat departments directly involved in launching and supporting inquiries to undertake a review of United Nations experience in international commission of inquiry and fact-finding mission processes. In early 2012, OHCHR convened a meeting of experts from OHCHR, the Department of Political Affairs, the Office of Legal Affairs and the Executive Office of the Secretary-General to exchange experiences on such issues as the mandates and terms of reference of international commissions of inquiry and fact-finding missions, the functioning of secretariats, cooperation with Member States and United Nations agencies, the conduct of investigations, reporting and follow-up to recommendations. Further steps were identified to increase the effectiveness of the United Nations in creating and supporting those mandates, including the sharing of practical tools developed by OHCHR to assist with investigations.

67. In November 2011, the Permanent Mission of Portugal and the Office for the Coordination of Humanitarian Affairs convened a workshop on the Security Council's role in enhancing accountability. The workshop brought together representatives of Member States, the United Nations, civil society and academia and was structured around three key aspects of accountability: individual criminal responsibility, fact-finding mechanisms and reparations.

68. With regard to individual criminal responsibility, it was recommended that a checklist be prepared to guide the Council's engagement with the International Criminal Court when it considers the possibility of referrals. The checklist could include reflections on when a situation warrants referral to the Court; funding arrangements for the situations referred; exemptions in the referrals; and the Council's role in promoting Member State cooperation with the Court. With regard to the latter, it was recommended that the Council remain engaged with those situations it refers and promote the cooperation of relevant parties with the Court. It was further recommended that the Council find ways of encouraging and possibly assisting States to do more at the national level. The possible role of peacekeeping and political missions in supporting national authorities in this field should also be considered.

69. The workshop noted the need for greater consistency in the establishment and mandates of international commissions of inquiry and fact-finding missions. When commissions are established, consideration should be given to such issues as the need for clarity, ensuring that the time frame for investigations and reporting is commensurate with the complexity of the situation, the need for members of the body to have wide-ranging expertise, including in the legal, military and forensic fields, the need for adequate funding, access and the cooperation of the relevant authorities, and the need to ensure the protection of witnesses and victims. It was recommended that international commissions of inquiry and fact-finding missions be established early in a crisis to contribute to preventing further violations and that steps be taken to ensure complementarity with other national and international judicial or investigative processes. Reference was also made to the need for more consistent follow-up, including on the part of the Council, to the recommendations of those commissions and fact-finding missions in order to ensure their effectiveness and credibility and to meet the expectations of victims. The Council should be systematically apprised of the activities and reports of non-Council-mandated international commissions of inquiry and fact-finding missions that investigate situations on its agenda. The Council should, moreover, request and promote the cooperation of States and other actors with their investigations and in the implementation of their recommendations.

70. With regard to reparations, the workshop recommended that best practices and expertise in this area be collected and exchanged. Participants noted that this aspect of accountability was frequently overlooked and that reparations tended to be seen in terms of financial compensation. Other possible forms of reparations, including restitution and rehabilitation, should, however, be considered. Similarly, it is important to look beyond individual victims and also consider affected communities as recipients of reparations. In addition, consideration should be given to the potential role of the Council in authorizing the use of assets frozen under sanctions regimes for reparations payments and for supporting national reparations programmes.

IV. Conclusions and recommendations

71. The solution to many of the problems we see in contemporary conflicts is relatively straightforward: greater compliance by parties to conflict with the letter and spirit of international humanitarian law and human rights law. This would spare civilians from the injurious and deadly effects of hostilities, prevent their displacement and significantly reduce their exposure to violations, degradation and dependency.

72. Ensuring the necessary degree of compliance and thereby strengthening the protection of civilians is essentially a matter of political will: the will to conduct hostilities within the parameters of international law, to refrain from using explosive weapons in populated areas, to allow engagement with non-State armed groups and open access to those in need of assistance and to enforce discipline and hold accountable those who perpetrate violations. It also implies the will, on the part of the Council, to consistently use the tools at its disposal and to proactively consider new approaches to prevent and respond to violations of international humanitarian and human rights law.

73. With these considerations in mind, and on the basis of the present report, including the annex, I propose the following recommendations, which should be read in conjunction with those contained in my 2009 and 2010 reports, which remain relevant.

Enhancing compliance with international law

74. While all violations are of concern, in the present report attention is focused on attacks against and interference with health-care facilities and providers and the need to prevent displacement. The Security Council could be more proactive on both issues. I urge the Council:

(a) To call for the systematic collection of information on attacks against or other forms of interference with health-care facilities, transport and providers and people seeking medical treatment;

(b) To systematically condemn and call for the immediate cessation of attacks against or other forms of interference with health-care facilities, transport and providers and people seeking medical treatment, as well as acts of displacement, in violation of international law;

(c) To systematically call for strict compliance by parties to conflict with applicable international law, including the prohibition against deportation, forcible transfer or displacement of the civilian population, in whole or in part, unless the security of the civilians concerned or imperative military reasons so demand;

(d) To apply targeted measures against the leadership of parties that perpetrate attacks against or otherwise interfere with health-care facilities, transport and providers or displace civilians in violation of international law;

(e) To request the establishment of commissions of inquiry in situations involving the large-scale displacement of civilians in violation of international law and/or to refer such situations to the International Criminal Court.

75. While the use of certain explosive weapons in populated areas may, in some circumstances, fall within the confines of the law, the humanitarian impact, both short- and long-term, can be disastrous for civilians. I therefore urge:

(a) Parties to conflict to refrain from using explosive weapons with a wide-area impact in densely populated areas;

(b) The Security Council, whenever relevant, to call upon parties to conflict to refrain from using such weapons in densely populated areas;

(c) Member States, United Nations actors and international and non-governmental organizations to intensify their consideration of this issue, including through more focused discussion and by undertaking or supporting the further collection and analysis of data;

(d) Member States to cooperate with all relevant stakeholders in collecting and making available to the United Nations and other relevant actors information on harm to civilians from the use of explosive weapons and in issuing policy statements outlining the conditions under which certain explosive weapons may and may not be used in populated areas.

Enhancing compliance by non-State armed groups

76. I urge all Member States to refrain from adopting national legislation, policies or other measures that have the effect of inhibiting humanitarian actors in their efforts to engage non-State armed groups for humanitarian purposes, including to undertake activities aimed at promoting respect for international humanitarian law.

Protection of civilians by United Nations peacekeeping and other missions

77. Protecting civilians from the threat of physical violence is a joint endeavour involving the host State and the peacekeeping mission deployed to support it. I therefore urge host States to work more proactively with peacekeeping missions to protect civilians.

78. In addition, I urge:

(a) Member States that contribute military and police personnel to protection-mandated missions to utilize the Department of Peacekeeping Operations/Department of Field Support protection of civilians training modules prior to deployment;

(b) Member States to provide adequate resources to peacekeeping missions, especially air-mobility assets and early warning capabilities, in order to support more effective rapid reaction in support of the protection of civilians.

Humanitarian access

79. In seeking to respond to constraints on access, particularly in situations of active fighting, Member States are encouraged to consult closely with humanitarian actors in order to better understand the nature of the constraints and the possible options for facilitating humanitarian access in a safe and sustainable manner.

80. In addition, on the basis of the annex to the present report, I urge:

(a) Member States to ensure the timely issuance of visas for international humanitarian personnel and simplified, expedited systems for exempting humanitarian goods and workers from fees, duties and taxes;

(b) Parties to conflict not to impede humanitarian activities through physical obstacles such as checkpoints or by withholding and delaying travel permits, project authorizations and official registration papers;

(c) Member States to recognize the fundamental importance of humanitarian negotiations to obtain access to vulnerable people and to refrain from impeding or preventing such negotiations;

(d) Parties to conflict to ensure that humanitarian activities are free from political or military interference and that they can be carried out in full compliance with the principles of humanity, neutrality, impartiality and independence;

(e) Member States to consistently condemn attacks against humanitarian workers and ensure accountability for such attacks, including by encouraging, instigating and supporting investigations and prosecutions at the national level.

Accountability

81. I urge the Security Council to find ways of encouraging and possibly assisting States to ensure accountability for violations of international humanitarian and human rights law at the national level.

82. Where national authorities fail to take the steps necessary to ensure accountability, I urge the Security Council to play a more proactive role in ensuring an appropriate international response. This may include requesting or mandating the establishment of international commissions of inquiry and fact-finding missions, supporting their operation, making greater use of the information resulting from their work and supporting the implementation of their recommendations, including through follow-up action such as the establishment of reparation regimes and referral to the International Criminal Court.

83. In this connection, I encourage the Council to consider the recommendations emerging from the November 2011 workshop on accountability, convened by the Permanent Mission of Portugal and the Office for the Coordination of Humanitarian Affairs, and to begin a dialogue aimed at strengthening the Council's role in enhancing accountability, at both the national and international levels.

Annex

Constraints on humanitarian access

1. In the past 18 months, constraints on access have continued to undermine the ability of humanitarian actors to reach people in need of assistance in a safe and timely manner and, conversely, the ability of people in need to reach essential services and assistance. Access constraints are broad and varied in nature, and, while all such constraints have a significant impact on civilians, not all are deliberate and not all constitute violations of international law.

2. Significant progress has been made in our ability to analyse access constraints, especially through the use of the access monitoring and reporting framework of the Office for the Coordination of Humanitarian Affairs. The framework has improved our understanding of the nature of constraints and supported the development of concrete strategies for responding to them. It has also shown that the constraints that are most common and that have the most severe consequences for affected people are: (i) restrictions on the movement of humanitarian workers or goods; (ii) active hostilities; (iii) interference in humanitarian activities; and (iv) violence against humanitarian workers.

Restrictions on movement

3. The timely deployment of humanitarian workers, relief goods and equipment from the outset and for the duration of an emergency is crucial for an effective humanitarian response. While States are entitled to demand visas and impose restrictions on the entry and movement of relief personnel, goods and equipment, ways must be found to mitigate the impact of such measures on timely and effective humanitarian action. Restrictions continue to be placed on the movement of humanitarian personnel and goods, both into and within conflict-affected States. In the Democratic Republic of the Congo, Myanmar, Pakistan, the Sudan and the Syrian Arab Republic, humanitarian activities are significantly hampered by the denial of visas or delays in their issuance to international experts.

4. Physical and bureaucratic obstacles to movement within States also restrict humanitarian access and the delivery of assistance. For example, in the past 18 months, in the West Bank of the occupied Palestinian territories, humanitarian workers experienced delays amounting to some 2,272 work-hours at more than 550 checkpoints erected by the Israeli authorities. Humanitarian access to areas isolated in the West Bank by the Israeli barrier, including East Jerusalem, also remains restricted because of the Israeli permit coordination regime. In 2011, hundreds of checkpoints controlled by various armed groups significantly hindered the movement of humanitarian workers in and around the capital of Yemen, Sana'a. While most were removed at the end of the year, some remain in place and continue to hamper the movement of humanitarian workers and goods.

5. Bureaucratic constraints such as registration and approval procedures for humanitarian organizations or projects and travel permit regimes are delaying, or in some cases preventing, assistance from reaching affected people. In the Sudan, for example, the Government refused to issue travel permits to international staff of the United Nations and non-governmental organizations to coordinate humanitarian

activities in South Kordofan and Blue Nile States for the first seven months of the humanitarian crisis, which began in mid-2011. A handful of international staff were granted permission to return to state capitals in February 2012, but international humanitarian workers have been unable to travel beyond them to any affected areas. While some national humanitarian workers have been able to cooperate with authorities to provide assistance in Government-held areas, all requests for travel to areas under the control of non-State armed groups have been refused. As a result, some 500,000 conflict-affected people in those two states have received limited or no humanitarian assistance. Meanwhile, a proposal by the African Union, the League of Arab States and United Nations to facilitate the delivery of humanitarian assistance remains under negotiation.

6. In Darfur, state authorities cancelled dozens of humanitarian missions in the past 18 months, particularly to areas under the control of armed groups such as Jebel Marra. In Central and Northern Darfur States, the intermittent cancellation of the United Nations Humanitarian Air Service by the authorities and a lack of clarity about procedures for controlling the movement of fuel have limited travel by humanitarian personnel to deep field locations. A ban by local authorities in Southern Darfur on movements beyond a 15-km radius around Nyala has significantly restricted the provision of humanitarian services and assistance to camps for internally displaced persons in the area.

7. While there is an urgent need for States to streamline and simplify registration and approval procedures for humanitarian actors and their projects, there are some positive examples of effective cooperation. For example, in Khyber Pakhtunkhwa and the Federally Administered Tribal Areas of Pakistan, humanitarian actors have worked with the authorities to establish an online tracking system for new project registrations, called "no-objection certificates". This increases transparency and helps to identify bottlenecks in administrative processes. While there are still delays in launching projects in certain areas, I welcome this joint initiative to facilitate the implementation of humanitarian activities. I also welcome the fact that in Sri Lanka, security clearances are no longer required for movement by humanitarian actors in the Northern Province.

8. In several cases, affected people have been unable to access humanitarian assistance because of restrictions on their movement. In Colombia, conflict-affected communities in remote rural areas have intermittently lacked access to essential food items, health care, education and other basic services, sometimes for periods of several weeks, owing to roadblocks, active hostilities, incursions by armed groups and the laying of mines by such groups. In East Jerusalem, access to basic services — especially hospitals — by most Palestinians continues to require special entry permits that can be used at only 4 of the 16 checkpoints along the barrier. The old city of Hebron remains segregated from the rest of the city by 122 closure obstacles, while the movement of Palestinians by car, and in some cases on foot, remains prohibited along certain streets, severely undermining the access of thousands of Palestinians to basic services.

Active hostilities

9. Obtaining humanitarian access during active hostilities can be extremely challenging. In Afghanistan, the Central African Republic, Colombia, the

Democratic Republic of the Congo, Pakistan, Somalia, South Sudan, the Sudan, the Syrian Arab Republic and Yemen, several million conflict-affected people do not receive assistance in areas where ongoing fighting prevents sustained humanitarian activity.

10. In the absence of agreed mechanisms with the parties to conflict for the delivery of assistance, it is almost impossible for humanitarian activities to be carried out in the midst of hostilities. It is therefore incumbent on humanitarian actors to establish and maintain dialogue with all relevant parties, to explain and build acceptance of their humanitarian purpose and to negotiate acceptable terms for implementing their activities. In the Central African Republic, the Office for the Coordination of Humanitarian Affairs led negotiations that reopened humanitarian access to Bria in Haute-Kotto, which was at the centre of fighting between armed groups. In Bamingui Bangoran in the north of the country, negotiations led to an agreement by armed groups to respect humanitarian activities and prevent criminal acts. In the occupied Palestinian territories, a dedicated access coordination unit has carried out negotiations with all parties on behalf of the humanitarian country team with a view to resolving specific access problems.

11. In the Darfur region of the Sudan, negotiations with the authorities facilitated three humanitarian missions to western Jebel Marra in 2011. Following an outbreak of renewed fighting in April 2012, however, the authorities in Central and Western Darfur States have restricted access to all areas controlled by armed groups and prevented humanitarian actors from responding to new displacements in Rokoro. In the Syrian Arab Republic, humanitarian actors are discussing with the Government a scale-up of their activities following a needs assessment mission in April 2012.

12. In the past year, the humanitarian country team, with the support of the Office for the Coordination of Humanitarian Affairs, successfully negotiated access to more than 160,000 people in need of assistance in areas under the control of non-State armed groups in Yemen. This involved establishing contact and building trust between those groups and humanitarian actors through a series of meetings and workshops to introduce humanitarian principles and reach agreement on a joint inter-agency response plan. Since December 2011, regular coordination meetings have been used to resolve access constraints and problems encountered in the implementation of the plan.

13. Given the importance of those negotiations with all relevant parties, I remain extremely concerned that in some countries, for example, Colombia and Pakistan, some humanitarian organizations are forbidden to engage with armed groups for humanitarian purposes.

Interference in the implementation of humanitarian activities

14. Humanitarian activities continue to suffer from interference by State and non-State actors pursuing a non-humanitarian agenda that results in the disruption of humanitarian projects and the diversion of assistance.

15. For example, in the Democratic Republic of the Congo, Somalia and South Sudan, attempts by both local authorities and non-State groups to extort funds or appropriate assets from humanitarian actors have resulted in routine harassment, leading in some cases to the closure of offices of humanitarian organizations or the

detention of staff. Demands for payment can involve tens of thousands of dollars per agency and are often made outside of official channels. When such fees were not paid or local authorities and humanitarian actors disagreed about operational requirements, humanitarian projects have been shut down by the authorities. In the past 18 months, Al-Shabaab in Somalia expelled more than 16 humanitarian organizations from areas under its control.

Violence against humanitarian workers

16. Violence against humanitarian workers remains a major constraint on humanitarian access. While the overall level of violence experienced by humanitarian workers since the issuance of my previous report has declined slightly, the number of deaths and abductions remains a major concern. Since that time, 86 humanitarian workers have been killed and 96 abducted worldwide. The reduction in such incidents is due primarily to the reduced humanitarian presence in areas where attacks have been on the rise, as well as the adoption of more effective risk assessment and mitigation measures by humanitarian organizations.

17. Abductions, including incidents in which the victims were killed, have become the fastest-growing type of security incident affecting humanitarian workers. I am particularly concerned about the impact that abductions have had on humanitarian activities in Afghanistan, Pakistan, Somalia and the border areas with Kenya, as well as in the Sudan and Yemen. In Afghanistan, more than 220 staff members of non-governmental organizations were abducted by armed groups in 2011. While the majority were released, often within 48 hours, eight abductees were killed by their captors. In Somalia and across the border in Kenya, 6 humanitarian workers have been abducted in the past 18 months, 11 are still missing or being held by their captors (including 8 who were abducted in 2008 and 2009). In January 2011, the abduction of three United Nations Humanitarian Air Service pilots in Western Darfur led to the suspension of humanitarian flights to 26 field locations for several months. In Yemen, at least 20 humanitarian workers were abducted in six separate incidents between 2011 and April 2012.

18. Attacks on humanitarian workers and convoys and the looting of supplies and assets continue to threaten humanitarian activities in the Central African Republic, the Democratic Republic of the Congo, South Sudan, the Sudan and Yemen. State security forces, non-State armed groups and criminal groups have all been implicated in these kinds of incidents. For example, during the reporting period, in South Sudan at least 51 humanitarian vehicles were commandeered by soldiers for non-humanitarian purposes. More than half of those cases involved physical violence against humanitarian workers, especially national staff. In a single incident of looting in August 2011 in Western Bahr el Ghazal, civilians, local security forces and authorities stole approximately 675 tons of emergency food supplies intended for food-insecure communities, including families displaced from the border region of Abyei.

19. When negotiations with parties to conflict are not possible or have failed to mitigate such threats, humanitarian workers often reduce activities or withdraw from insecure locations. Following several violent looting incidents in the Kivu Provinces of the Democratic Republic of the Congo, several humanitarian organizations had to withdraw from the areas in question. Nine national staff of non-governmental

organizations have been killed in South Kivu since October 2011; five were deliberately targeted and the remaining four were caught in the crossfire between non-State armed groups and security forces.

20. An independent study commissioned by the Office for the Coordination of Humanitarian Affairs on operating in complex security environments,⁶ confirmed that building acceptance for humanitarian action among communities and the parties to conflict remains the best way to gain safe and sustained access to people in need. It confirmed that building such acceptance is a process, not an event, that requires long-term investment in dialogue and sustained engagement with all relevant parties. The study calls upon humanitarian organizations to continuously re-evaluate their security and risk management approaches. For example, it observes that the "bunkerization" of humanitarian operations and the use of armed guards and escorts has conflicted with the ability of humanitarian workers to interact with local communities, thus reinforcing the misperception that humanitarian workers harbour a pro-Western agenda.

21. While acknowledging that certain situations may require increased security for humanitarian workers, the study presents a range of good practice where low-profile protection measures, including alternatives to armed guards and escorts, have proven effective. For example, in parts of Pakistan and the Sudan, some humanitarian actors have shared with the authorities information on the movement of staff and goods, allowing law enforcement agencies to monitor and ensure their safety by temporarily increasing patrols or static presence along specific routes rather than escorting them.

22. The use of air assets, including the United Nations Humanitarian Air Service, has also helped humanitarian workers avoid certain high-risk areas. While this has sometimes allowed assistance activities to continue, it comes at a significantly increased operational cost and can be difficult to negotiate with authorities. In Yemen, for example, humanitarian organizations are still waiting for permission to launch humanitarian air operations between the capital Sana'a and the northern city of Sa'dah.

23. It is imperative that States and other parties to conflict work closely with humanitarian organizations to identify appropriate, context-specific solutions and strategies to mitigate security risks in a way that allows humanitarian assistance to remain neutral, impartial and independent.

⁶ J. Egeland, A. Harmer and A. Stoddard, "To stay and deliver: good practice for humanitarian workers in complex security environments", Office for the Coordination of Humanitarian Affairs (2011).